

**STATE BOARD OF EDUCATION
ADMINISTRATIVE CODE
COMMENT/RESPONSE FORM**

This comment and response form contains comments from and since the October 3, 2018, meeting of the State Board of Education when the rulemaking was considered at First Discussion Level.

Topic: Fiscal Accountability and Compliance **Meeting Date:** November 7, 2018

Code Citation: N.J.A.C. 6A:23A-18.2 **Level:** Proposal

Division: Finance **Completed by:** Division of Finance

Summary of Comments and Agency Responses:

The following is a summary of the comments received from State Board of Education (State Board) members and members of the public and the Department of Education's (Department) responses. Each commenter is identified at the end of the comment by a letter or number that corresponds to the following list:

- A. Arcelio Aponte, President
 State Board of Education
- B. Kathy Goldenberg, Vice President
 State Board of Education
- C. Dr. Ronald Butcher, Member
 State Board of Education
- D. Jack Fornaro, Member
 State Board of Education
- E. Andrew Mulvihill, Member
 State Board of Education
- F. Sylvia Sylvia-Cioffi, Member
 State Board of Education
- 1. Theresa Hornberger
 ASAH

- 1. COMMENT:** The commenter noted that the issues of paid leave hours and teachers with different hourly rates have been raised multiple times for a variety of reasons. The commenter asked if the Department has considered using a specific dollar amount that would equate to 40 hours. (C)

RESPONSE: The proposed amendment at N.J.A.C. 6A:23A-18.6(a)66 aligns the allowable costs incurred with the actual tuition paid for the individual students who attend an APSSD each year. The State uses fixed dollar amounts for the payout of earned sick leave when a school district employee retires. N.J.A.C. 6A:23A-18.6(a)66 allows for

an annual payout for earned unused sick benefit for employees of an APSSD because tuition rates are set annually and charged to school districts based on specific students. Any dollar amount in relation to a specific number of hours would vary based on the salary of an individual employee of an approved private school for students with disabilities (APSSD); therefore, the proposed amendment at N.J.A.C. 6A:23A-18.6(a)66 is based on a percentage of the employee's annual salary. N.J.A.C. 6A:23A-18.2 establishes 35 hours per work week as the set number of hours of a "full time" employee. The Department used the established 35-hour work week to translate the number of hours provided in P.L. 2018, c. 10 to the percentage of an annual salary as proposed in the amendment at N.J.A.C. 6A:23A-18.6(a)66 (35 hours per week per N.J.A.C. 6A:23A-18.2, times 52 weeks in one year, is equal to 1,820 total hours per year. Forty hours as a percentage of 1,820 total hours per year (40 hours divided by 1,820 hours) is equal to 2.2 percent).

2. **COMMENT:** The commenter asked if there will be a significant difference in the amount of paid unused sick benefit between, for example, the 40 hours of a novice teacher at an APSSD versus a 20-year veteran teacher at the school. (C)

RESPONSE: The dollar amount that equates to 40 hours will depend on an individual employee's salary.

3. **COMMENT:** The commenter asked what generated the idea for the proposed amendment and whether it was suggested by the APSSDs or initiated by the Department. (E)

RESPONSE: The Department initiated the amendment to align the rules at N.J.A.C. 6A:23A-18.6(a) with the recent statutory change.

The development of the current regulation was a collaborative process. The Department met with several interested parties last year while the rules governing tuition charged by APSSDs were being revised to examine how to best provide incentives for APSSD employees to not use sick time, especially since having the same teacher(s) at work each day is very important for the unique student population of APSSDs that depends on routine and consistency.

4. **COMMENT:** The commenter asked if the proposed amendment will incur additional costs for taxpayers. (E)

RESPONSE: It is possible that the proposed amendment could cause an increase in the tuition paid by school districts to APSSDs, but it will depend on the employee benefits provided by each APSSD. The Department is setting a maximum amount that each APSSD may payout in earned unused sick time to its employees and include in allowable costs charged in tuition to school districts. Each APSSD sets forth in an employee manual what benefits it offers to employees.

5. **COMMENT:** The commenter inquired if a teacher association or another association recommended the proposed amendment. (D)

RESPONSE: No, the Department developed the proposed amendment due to P.L. 2018, c. 10.

6. **COMMENT:** The commenter supported the proposed amendment and the idea of encouraging the regular presence of teachers who are known by the students attending an APSSD. (B)

RESPONSE: The Department appreciates the commenter's support.

7. **COMMENT:** The commenter stated that consistency is very important for students in APSSDs. The commenter added that it is also important to provide the benefit of sick days and encourage their use when an APSSD employee is not in the best of health even if it means a substitute is necessary and some level of consistency is temporarily lost. (F)

RESPONSE: P.L. 2018, c. 10 was enacted to enable employees of all employers Statewide to have the flexibility to not come to work when sick.

8. **COMMENT:** The commenter suggested the State Board review the proposed rulemaking, which involves only one amendment, at Proposal Level during the November meeting instead of at Second Discussion. (A)

RESPONSE: The Department welcomes the opportunity to proceed directly to Proposal Level.

9. **COMMENT:** The commenter requested the formula the Department used to calculate 2.2 percent, which equates to approximately 40 hours for an employee working a 35-hour workweek. (1)

RESPONSE: The formula is as follows: 35 hours per week per N.J.A.C. 6A:23A-18.2, times 52 weeks in one year, is equal to 1,820 total hours per year. Forty hours as a percentage of 1,820 total hours per year (40 hours divided by 1,820 hours) is equal to 2.2 percent.

10. **COMMENT:** The commenter asked if the 2.2 percent used for a 35-hour workweek can be prorated to account for 32.5-, 37.5-, and 40-hour workweeks. (1)

RESPONSE: No, the calculation of the maximum allowable earned unused sick time payment is based upon a standard 35-hour work week as set forth in N.J.A.C. 6A:23A-18.2. Costs of payments made to an individual employee for earned unused sick benefit in excess of 2.2 percent of the individual employee's contracted salary amount during the fiscal year in which the payment is made is a non-allowable cost and cannot be included in the calculation of tuition charged to school districts.

11. **COMMENT:** The commenter stated that P.L. 2018, c. 10 permits the use of paid time off (PTO) and payment of unused PTO. The commenter asked if the Department will now allow for the payment of unused PTO. (1)

RESPONSE: PTO is a record keeping technique used in place of specific identification of vacation days, sick days, and personal days earned (in accordance with N.J.A.C. 6A:23A-18.5(f)) and used.

Because P.L. 2018, c. 10 allows employers such as APSSDs to utilize paid time off to satisfy the requirement to provide earned sick leave to employees, APSSDs may include as an allowable cost the payment of earned unused paid time off (sick, vacation, personal, or PTO days) to the extent it is used to comply with the provisions of P.L. 2018,

c. 10, up to the 2.2 percentage limitation proposed at N.J.A.C. 6A:23A-18.6(a)66 beginning with the 2018-2019 school year.



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
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Proposal Level
November 7, 2018

LAMONT O. REPOLLET, Ed.D.
Commissioner

TO: Members, State Board of Education

FROM: Lamont O. Repollet, Ed.D.
Commissioner

SUBJECT: N.J.A.C. 6A:23A-18.6(a)66

AUTHORITY: P.L. 2018, c. 10 and N.J.S.A. 18A:4-15

REASON
FOR ACTION: Amendment

SUNSET DATE: July 3, 2024

Summary

The Department of Education (Department) proposes to amend Subchapter 18 of N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency, and Budgeting Procedures.

The rules in N.J.A.C. 6A:23A-18, Tuition for Private Schools for Students with Disabilities, provide the methodology for calculation of tuition charged by approved private schools for students with disabilities (APSSDs). The rules also establish non-allowable costs, audit and budgeting requirements, new school application information, and additional fiscal requirements.

The amendment proposed at N.J.A.C. 6A:23A-18.6(a)66 will increase the flexibility of APSSD employers to pay earned unused sick time under P.L. 2018, c. 10 (N.J.S.A. 34:11D-1 et seq.). The new law will require private employers to provide sick time to certain employees and also will permit employers to pay employees for earned unused sick leave. Under the new law, "[t]he employer shall not be required to permit the employee to accrue or use in any benefit year, or carry forward from one benefit year to the next, more than 40 hours of earned sick leave." In other words, the employer's obligations under the law are limited to a maximum of 40 hours of paid sick leave per year. The new law becomes effective October 29, 2018.

Subchapter 18. Tuition for Private Schools for Students with Disabilities

N.J.A.C. 6A:23A-18.6 Non-allowable costs

This section provides a lengthy, yet non-exhaustive, list of 73 types of non-allowable costs that can be included in the tuition rate charged by APSSDs to school districts. Non-allowable costs play a crucial part in the current reconciliation process between the tentative

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tuition rate and the certified actual cost per student. If a cost is deemed non-allowable, an APSSD cannot include the cost in its expenditures, which forms the basis for the certified actual cost per student and, therefore, is directly related to the tuition rates paid by the sending district boards of education.

The Department proposes to amend N.J.A.C. 6A:23A-18.6(a)66 to increase the flexibility of APSSD employers to pay earned unused sick time under P.L. 2018, c. 10. To ensure efficient expenditure of public funds, N.J.A.C. 6A:23A-18.6(a)66 currently limits the amount of earned unused sick leave payments that can be treated as allowable costs by APSSDs. Under the current regulation, payments for unused sick leave in excess of one percent of the individual employee's contracted salary amount during the fiscal year in which the payments are made are deemed non-allowable costs. Based on a 35-hour workweek, one percent of current salary equates to 18.2 hours of earned unused sick time, so the current rule does not provide the same level of flexibility to employers as P.L. 2018, c. 10. Therefore, the Department proposes to amend the percent set forth in the regulation to 2.2 percent of the individual employee's contracted salary amount, which equates to approximately 40 hours for an employee working a 35-hour workweek.

As the Department has provided a 60-day comment period on this notice of proposal, the notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Department anticipates the proposed amendment will have no social impact. The proposed amendment concerns a single non-allowable cost in the calculation of tuition charged by APSSDs.

Economic Impact

The proposed amendment will promote the purposes of the Paid Sick Leave Act, P.L. 2018, c. 10 (N.J.S.A. 34:11D-1 et seq.), by permitting APSSD employers to increase the amount of paid earned unused sick time provided to employees and include the costs in the tuition rate charged to school districts. The proposed amendment may result in a minor increase in the overall costs of an APSSD's program above the costs for the 2017-2018 school year. The Department anticipates the resulting negligible increase in tuition will not create an undue burden to school districts.

Federal Standards Statement

There are no Federal standards or requirements applicable to the proposed amendment; therefore, a Federal standards analysis is not required.

Jobs Impact Statement

The Department anticipates the proposed amendment will have no impact upon the generation or loss of jobs in the State. The proposed amendment concerns the calculation of tuition charged by APSSDs.

Agriculture Industry Impact

The proposed amendment will have no impact upon the agriculture industry in the State. The proposed amendment concerns the calculation of tuition charged by APSSDs.

Regulatory Flexibility Statement

APSSDs meet the definition of a small business as that term is defined under Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are currently approximately 160 approved APSSDs in New Jersey.

The proposed amendment does not impose additional reporting, recordkeeping, or other compliance requirements on APSSDs. The proposed amendment will ease a current compliance requirement by allowing APSSDs more flexibility to provide payments of earned unused sick time to employees in a manner that is less restrictive than the current regulation.

Since this amendment provides APSSDs with more regulatory flexibility and allows them to include a higher amount in the tuition charged to school districts, the proposed amendment does not impose a financial burden on APSSDs.

Housing Affordability Impact Analysis

The proposed amendment will have no impact on the average cost of housing in the State. The proposed amendment pertains to the calculation of tuition charged by APSSDs.

Smart Growth Development Impact Analysis

The proposed amendment will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendment pertains to the calculation of tuition charged by APSSDs.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

There is an extreme unlikelihood that the proposed amendment would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the proposed amendment solely concern the calculation of tuition charged by APSSDs.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

**CHAPTER 23A, FISCAL ACCOUNTABILITY, EFFICIENCY
AND BUDGETING PROCEDURES**

SUBCHAPTER 18. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES

6A:23A-18.6 Non-allowable costs

- (a) Costs that are not allowable in the calculation of the certified actual cost per student shall include the following:
1. Administrative costs in excess of, and/or instructional cost less than, the percentages indicated in N.J.A.C. 6A:23A-18.3(a)3;
 2. Costs for maintaining an administrative office in a private home or other residence;
 3. Advertising costs in excess of 0.5 percent of the APSSD's actual allowable costs, not including advertising;
 4. Costs associated with lobbying, including salaries and fringe benefits;
 5. Costs other than those governed by (a)50 below associated with lobbying in an attempt to influence:
 - i. The outcome(s) of any Federal, State, or local referendum, initiative, or similar activity; or
 - ii. The introduction, enactment, or modification of Federal or State legislation or a State rulemaking.
 6. The salary of a professional staff member, consultant, or subcontractor, including a member of a management company, who is not certified but is functioning in, or contracted to perform the duties of, a position requiring certification in accordance with N.J.A.C. 6A:9B or bachelor's or master's degree under this subchapter;

7. The salary and fringe benefits of a staff member, or any payment(s) to a purchased service provider, for time not expended and/or services not performed except in accordance with (a)56 and 57 below;
8. A salary in excess of the associated maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p) and (q) for a staff member or consultant whose position requires certification, license, or a bachelor's or master's degree, including a director, assistant director, executive director, and business manager.
 - i. An APSSD shall prorate salaries for such part-time or split-time positions, including salaries in entities described in N.J.A.C. 6A:23A-18.3(e) and (f);
 - ii. The part-time and split-time maximum allowable salary shall be calculated as follows:
 - (1) Multiply the staff member's total salary by the percentage of time attributed to the APSSD position;
 - (2) Multiply the maximum allowable full-time salary for the position by the percentage of time attributed to the APSSD position; and
 - (3) Subtract the amount calculated in (a)8ii(2) above from the amount calculated in (a)8ii(1) above. If the result is greater than zero, this is the non-allowable part-time or split-time salary.
9. A salary of an employee not covered by (a)6 above in excess of the lowest maximum allowable salary in the same county according to the list of maximum allowable salaries determined in N.J.A.C. 6A:23A-18.3(o), (p) and (q) whose position does not require certification, license, or bachelor's degree, including an individual with the director, assistant director, executive director, or business manager job title whose job function(s) are not consistent with those functions described in N.J.A.C. 6A:23A-18.2.
 - i. An APSSD shall prorate salaries for such part-time or split-time positions, including salaries in entities described in N.J.A.C. 6A:23A-18.3(e) and (f).

- ii. The part-time and split-time maximum allowable salary is calculated as follows:
 - (1) Multiply the staff member's total salary by the percentage of time attributed to the APSSD position;
 - (2) Multiply the lowest maximum allowable salary in the same county by the percentage of time attributed to the APSSD position; and
 - (3) Subtract the amount calculated in (a)9ii(2) above from the amount calculated in (a)9ii(1) above. If the result is greater than zero, this is the non-allowable part-time or split-time salary.
- 10. Costs of fringe benefits when based on and/or associated with a non-allowable salary;
- 11. Legal, accounting, or consultant fees resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The Commissioner shall determine whether the challenge is frivolous by considering factors including, but not limited to, the following:
 - i. Overall merit of the claim; or
 - ii. Whether the challenge serves the public interest;
- 12. Consultant fees for services that fail to meet the following standards:
 - i. The work of the consultant shall be detailed in an executed written contract signed by both parties that includes:
 - (1) A detailed description of the nature of the services to be provided;
 - (2) Duration of the contract;
 - (3) Detailed fee information;
 - (4) Fee payment schedule(s);
 - (5) The approximate number of days to complete the work; and
 - (6) The anticipated product or outcome of the work;
 - ii. Performed by a consultant who does not possess the appropriate school certification when such certification exists;

13. Total contributions, donations, awards, and scholarships in excess of \$750.00;
14. Depreciation unacceptable under N.J.A.C. 6A:23A-18.5(a)3 and 4 and depreciation:
 - i. On donated goods and assets;
 - ii. Not based on estimated straight-line method;
 - iii. On automobiles in excess of the dollar or percentage limitation contained under Internal Revenue Code (IRC) Section 280F, including any passenger vehicle not used in transporting students or supplies without regard to weight class exceptions defined in Section 280F(d)(5)(A);
 - iv. On a stepped-up basis resulting from the sale to a related party as defined in IRC Section 318 for Constructive Ownership of Stock. For a nonprofit organization, Section 318 will apply to the members of the board of directors or related parties as defined in IRC Section 267(b) or 267(c) unless the gain from such a sale was used to offset tuition for a prior year; or
 - v. On a stepped-up basis from transfer from one spouse to another upon death as defined in IRC Section 1014;
15. The cost of:
 - i. Depreciation associated with the purchase and ownership of any passenger vehicle not used for transporting students or supplies purchased on or after July 1, 2017, if:
 - (1) The depreciable basis upon which depreciation is calculated exceeds \$30,000;
 - (2) The depreciation expensed exceeds allowable depreciation calculated on the straight-line basis over a period of not less than five years; or
 - (3) The depreciation expensed is attributable to a passenger vehicle that has been assigned to, or used on a regular basis, by an APSSD staff member who is not the APSSD executive director, director, and/or owner.

- ii. Vehicle lease payments made pursuant to the lease agreement entered into, on, or after July 1, 2017, when:
 - (1) The annual lease payment(s) exceeds the annual depreciation allowable on an owned passenger vehicle with a maximum depreciable basis of \$30,000; or
 - (2) The lease payments are for a leased passenger vehicle that has been assigned to, or used on a regular basis by, an APSSD staff member who is not the APSSD executive director, director, and/or owner.
- 16. Investment expenses associated with the purchase/sale of stock, securities, other investment instruments, or other investments not associated with the education of students with disabilities;
- 17. Total costs in excess of \$500.00 incurred for entertainment expenses;
- 18. The cost of food/beverages in excess of \$1,500 for activities such as, but not limited to, staff meetings, parent/teacher meetings, workshops, and professional development seminars for parents or teachers;
- 19. Costs from a fine or penalty resulting from a violation of, or failure by, the APSSD to comply with a Federal, State, and/or local law or rule;
- 20. Meal costs in excess of the limits set forth in N.J.A.C. 6A:23A-18.23.
- 21. The cost of keyman insurance except where a term insurance policy is required by a lender as collateral for a loan;
- 22. The cost of an employee's life insurance coverage, both term and whole life policies, in excess of 3.5 times the employee's gross salary;
- 23. Costs for fringe benefits as follows:
 - i. When the benefits are determined in an arbitrary or capricious manner, including, but not limited to, class of employee, whether by title or position rather than according to an existing written uniform policy based on an equitable standard of

- distribution, such as years of service or education. The criteria cannot be exclusionary regardless if based on an equitable standard of distribution, such as years of service or education;
- ii. When the fringe benefit has not been adopted by the APSSD's board of directors at a board meeting prior to the benefit's implementation, documented in the meeting minutes, and the employees were not made aware of the policy; or
 - iii. When the benefit is not listed in N.J.A.C. 6A:23A-18.5(f) or not approved by the Commissioner, or his or her designee;
24. The cost of fundraising, including, but not limited to, costs for a financial campaign, an endowment drive, or solicitation of a gift and bequest to raise capital or obtain a contribution;
25. Goodwill;
26. Interest costs on loans when:
- i. Interest is in excess of the general prevailing rate at the time the loan was taken;
 - ii. The loan is a less-than-arm's length/related party transaction that has not been previously approved by the Department and has not been repaid in accordance with the Department's approval letter; or
 - iii. The loan is not exclusively used to meet educational program needs;
27. Interest costs on long-term loans or mortgages if:
- i. The loan is used for other than financing of fixed assets;
 - ii. The loan is not secured by the fixed asset being financed; or
 - iii. The interest costs are on the portion of the loan term that exceeds the recovery period for depreciation of the fixed asset securing the loan;
28. A loss incurred on the sale or exchange of fixed assets between related parties;
29. The write-off of uncollected accounts receivable (bad debts):

- i. Before three years has elapsed and before a reasonable effort has been made to collect such accounts receivable; or
 - ii. That arise out of the APSSD's provision of:
 - (1) Extraordinary services;
 - (2) Services to students placed by an out-of-State agency; or
 - (1) Services to private placement students;
30. An ordinary living expense for a student that is normally assumed by the parent of a student attending a public day school;
31. Retirement plan costs that are:
- i. Not in conformance with the Employee Retirement Income Security Act of 1974, P.L. 93-406 and its successor legislation, and that exceed costs allowed by the Internal Revenue Service;
 - ii. For a non-qualified retirement plan(s);
 - iii. For a defined contribution plan in excess of the maximum percentage and maximum dollar amount, (see IRC Section 415(c)) as the lesser of 100 percent of the employee's compensation or \$53,000 as adjusted annually in IRC;
 - iv. For a defined benefit plan in excess of an amount, by employee, that would allow the defined plan to provide a benefit in excess of the percentage of the employee's number of years of service divided by 55 times the highest three-year average salary and at an age prior to age 55;
 - v. For contributions to a retirement plan that are not applied consistently in accordance with (a)23 above even if in compliance with Employee Retirement Income Security Act of 1974 (ERISA). Such excess contributions will be deemed a non-allowable cost;
 - vi. Not paid to a qualified plan within nine months of the end of the APSSD's fiscal tax year;

- vii. Not paid in accordance with the fringe benefits criteria in (a)23 above; and
 - viii. If applicable, not in conformance with a church plan as defined in ERISA;
32. Costs of a contingent pay increase or merit pay award when the amount(s) was not in accordance with N.J.A.C. 6A:23A-18.5(a)14 or 15 or the contingent pay increase or merit pay award(s) is inconsistent with the plan(s) submitted to and approved by the Commissioner, or his or her designee, prior to implementation;
 33. Costs for the payment of a bonus;
 34. Costs for a loss on an investment;
 35. Costs associated with a research activity, including, but not limited to, staff salaries, supplies, or printing and reproduction of a material;
 36. Payment of Federal, State, and local income taxes on income other than tuition;
 37. Costs associated with travel to and from the officer's or employee's home and the school or agency;
 38. Costs for all personal expenses, such as a personal travel expense or repair on a personal vehicle;
 39. Costs associated with personal use of an APSSD-owned or -leased vehicle, including, but not limited to, to/from work commutation as determined pursuant to N.J.A.C. 6A:23A-18.5(a)18;
 40. Costs associated with an APSSD-owned or -leased vehicle or a vehicle contained in a related party transaction involving the purchase of transportation services where a detailed daily mileage log documenting vehicle usage was not maintained;
 41. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the IRS for automobile travel;
 42. Transportation costs for a student to and from school, except where the student's IEP requires after-school activities;

43. Rental costs for buildings and equipment when the lessor is not a separately identifiable legal entity;
44. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, transactions between divisions of an institution; institutions or organizations under common control through common officers, directors, members, or owners; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but are not limited to:
 - i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (for example, straight line depreciation in accordance with N.J.A.C. 6A:23A-18.5(a)3, mortgage interest, real estate taxes, property insurance, and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The APSSD shall submit a cost of ownership form in a Commissioner-supplied format. The property or business owner shall sign and notarize the cost of ownership form and include a copy of the lease agreement, and a list of anticipated costs to be incurred by the property owner;
 - ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense, and maintenance costs) incurred by the sub-lessor. Profit, return on investment, or windfall of any kind shall not be included in the sub-rental cost. The sub-lease agreement shall include a list of anticipated costs to be incurred by the sub-lessor and shall be signed by the sub-lessor and notarized;

- iii. Cost of purchasing/lease purchasing buildings, equipment, or other goods from related parties in excess of the original cost to the related party, less depreciation calculated using the straight line method;
 - iv. Cost of personal services paid to a related party when the services are provided by an employee of, or consultant to the APSSD acting as an employee or agent of the related party. Cost of personal services includes all remuneration, paid or accrued, for services rendered during the school year, including, but not limited to, wages, salaries, management fees, and fringe benefits; and
 - v. Cost of the purchase of goods or services from a related party in excess of the actual allocated costs of providing the purchased goods and/or services, including, but not limited to, salaries, fringe benefits, insurance, operation, maintenance, straight-line depreciation incurred by the related party owner. Costs may include a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The APSSD shall file a cost of ownership form in a Commissioner-prescribed format. The cost of ownership form shall be signed by the property or business owner and shall include a copy of the purchase agreement, and a list of anticipated costs to be incurred by the related party;
45. Cost of a less-than-arm's length/related party transaction when the related party and/or the APSSD, as applicable, does not:
- i. Provide to the Commissioner documentation on Commissioner-prepared forms to support the actual costs of ownership, or does not allow the Commissioner access to such information for review and audit during normal business hours.
- Documentation shall include, but not be limited to:
- (1) The related parties' tax returns;

- (2) The related parties' invoices received, payroll and payroll tax records, bills and canceled checks, or electronic transfer records concerning the transaction; and
 - (3) Any other document(s) requested by the Department; or
- ii. Disclose the related party relationship on Commissioner-prepared forms pursuant to this subchapter and N.J.A.C. 6A:23A-19;
- 46. Rental costs under sale and leaseback arrangements in excess of the amount that would be allowable if the APSSD continued to own the property;
- 47. Indirect and direct costs that are:
 - i. For unrelated activities or enterprises as defined in N.J.A.C. 6A:23A-18.3(g); or
 - ii. Unrelated to the function, operations, and/or program of an APSSD as defined in N.J.A.C. 6A:23A-18.3(d);
- 48. Costs for the year-end audited financial statements when prepared by an individual who does not meet the requirements in N.J.A.C. 6A:23A-18.10(a);
- 49. Costs for membership in civic, business, technical, and professional organizations when the cost is:
 - i. Not reasonably related to the value of the services or benefits received;
 - ii. For membership in an organization that devotes any activity(ies) to influencing legislation or State regulation(s) not directly related to the educational instruction program of students with disabilities and the activity(ies) is not subsidized by sources other than membership fees from APSSDs;
 - iii. Not an established annual rate charged to all members, but one that is periodically adjusted during the year; or
 - iv. Not supported by an annual affidavit signed by the organization's board of directors indicating all legal and lobbying costs not directly associated with the

educational instruction programs for students with disabilities were funded by sources other than dues from APSSDs;

50. A staff member's salary that is not properly supported by the employee's time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6A:23A-18.5(a)10;
51. A salary or payment made to a member(s) of the board of directors/trustees for services performed in his or her capacity as a member of the board of director/trustees;
52. Cost of a pension plan contribution made on behalf of, and/or medical benefits for, current or retired members of the board of directors/trustees;
53. Cost of medical benefits for retired employees who have not reached the age of 55 and who were employed a combination of less than 25 years in a New Jersey public school, a New Jersey public agency, or a New Jersey APSSD and have less than 10 years of service in an APSSD;
54. Costs of salaries and fringe benefits of unrecognized position titles not properly approved pursuant to N.J.A.C. 6A:9B-5.5;
55. Cost of employee severance pay:
 - i. In excess of four weeks' salary; and
 - ii. If, in addition, the cost of a buyout of the employee's contract;
56. Cost of a buyout of an employee contract:
 - i. In excess of 90 days' salary; and
 - ii. If, in addition, the cost of the employee's severance pay;
57. Cost of a salary or consultant fee paid to a full-time employee or consultant for performing more than one administrative function in the APSSD;
58. Cost to purchase or rent an administrative office or business office at a location other than at the APSSD location that was not approved pursuant to N.J.A.C. 6A:23A-18.5(d);

59. Cost of compensation increases paid after the start of the fiscal year not in accordance with N.J.A.C. 6A:23A-18.5(k);
60. Start-up costs in excess of costs allowed pursuant to N.J.A.C. 6A:23A-18.4(d);
61. Costs of salaries and fringe benefits for employees providing services that are not in compliance with N.J.A.C. 6A:23A-18.5(e)2;
62. The cost of a fine levied pursuant to N.J.S.A. 18A:6-7.5 for any staff member who does not have:
 - i. A criminal history clearance prior to starting employment or;
 - ii. An application for employment on an emergent basis in accordance with N.J.S.A. 18A:6-7.1c;
63. Legal costs for an APSSD and/or for an APSSD representative(s), including an owner, employee, or agent who has plead guilty and/or is found to be guilty or liable in a case involving the misuse of funds, fraud (criminal or civil), or endangerment or abuse of a child(ren);
64. The salary in excess of the associated maximum salary identified in N.J.A.C. 6A:23A-18.3(q) and determined in accordance with N.J.A.C. 6A:23A-18.5(o) and (p);
65. Costs found to be patently unreasonable by the Commissioner, or his or her designee, or an independent auditor/accountant;
66. Cost(s) of payments made to an individual employee(s) for earned unused sick benefit that is in excess of [one] **2.2** percent of the individual employee's contracted salary amount during the fiscal year in which the payment is made;
67. Proportional costs of salary and fringe benefits for any administrative staff member, as defined in N.J.A.C. 6A:23A-18.3(o), with the exception of principal and unrecognized position titles in the administrative category, that are in excess of a total of 3.0 FTE administrative positions per APSSD, per fiscal year. If the combined administrative

- positions exceed 3.0 FTE, the disallowed amount will be apportioned equally across all of the positions;
68. Costs associated with travel, defined in N.J.A.C. 6A:23A-18.21, that:
 - i. Exceed .0025 of the total actual allowable costs, less travel costs, in a fiscal year for an APSSD, or \$20,000, whichever is less; and/or
 - ii. Violate the provisions of N.J.A.C. 6A:23A-18.21(g);
 69. Costs associated with waiver of health insurance coverage that violate the provisions of N.J.A.C. 6A:23A-18.5(f)1;
 70. Costs associated with depreciation of leasehold improvements that violate N.J.A.C. 6A:23A-18.5(a)4;
 71. Costs of the salary, benefits, or other compensation provided to an APSSD employee or contractor/consultant who is receiving retirement benefits as a result of his or her retirement from the APSSD after two calendar years has expired since the individual began retirement;
 72. Costs associated with undocumented outflows from petty cash, pursuant to N.J.A.C. 6A:23A-18.5(a)16; and
 73. Costs associated with the failure to comply with the requirements of N.J.A.C. 6A:23A-18.5(d).